

Editor's note: Appealed -- remanded Civ.No. C78-213 (D.Wyo. Feb. 12, 1979); reaffirmed on judicial remand -- See Donald Coyer (On Judicial Remand), by 50 IBLA 306 (Oct. 14, 1980); Appealed - aff'd, Civ. No. C 80-372 K (D. Wyo. March 5, 1981), reversed No. 81-1415 (10th Cir. Nov. 4, 1983), 720 F.2d 626; cert denied, sub nom. Easterday v. Coyer, 104 S.Ct. 2346, 466 US 972 (May 14, 1984).

DONALD W. COYER, APPELLANT
ALFRED L. EASTERDAY, APPELLEE

IBLA 78-409

Decided July 31, 1978

Appeal from the rejection of appellant's oil and gas lease offer. W-59232.

Dismissed.

1. Administrative Procedure: Administrative Review -- Appeals -- Res Judicata -- Rules of Practice: Appeals: Generally -- Rules of Practice: Appeals: Dismissal

Where the Board of Land Appeals has considered an appeal and rendered a final decision holding that a particular oil and gas lease offer was not proper and must be rejected, the applicant may not thereafter appeal the matter to this Board merely because the Bureau of Land Management, in implementing the Board's decision, mistakenly advised him that he had the right to such an appeal. The matter is res judicata, and the subsequent appeal must be dismissed.

2. Administrative Procedure: Administrative Review -- Administrative Procedure: Judicial Review -- Appeals -- Judicial Review -- Rules of Practice: Appeals: Generally

Where the Board of Land Appeals, by a previous decision, has held that a particular oil and gas lease offer must be rejected, and the rejected applicant files suit for judicial review of that decision in the United States District Court, and also files a contemporaneous appeal to the Board from a BLM decision

implementing the Board's decision, the Board will defer to the Court's jurisdiction and make no decision on the merits of the appeal, which is subject to summary dismissal by the Board.

APPEARANCES: Matthew J. Flynn, Esq., Milwaukee, Wisconsin, and Jerry Statkus, Esq., Cheyenne, Wyoming, for the appellant; Morton J. Schmidt, Esq., Milwaukee, Wisconsin, for the appellee.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

In April 1977, the Wyoming State Office of the Bureau of Land Management conducted its regular monthly drawing of simultaneously filed oil and gas lease offers. The drawing entry card offer of Donald W. Coyer was drawn first for Parcel No. Wy-44, and the card filed by Alfred L. Easterday was drawn second. Easterday protested the issuance of the lease to Coyer, contending that Coyer's agreement with his leasing service (Resource Service Company) invested the leasing service with an undisclosed interest in the offer and the lease if issued. The Wyoming State Office dismissed Easterday's protest, whereupon he filed an appeal to this Board. The decision of the Wyoming State Office named Coyer as an adverse party, and Coyer was served copies of all documents filed in connection with Easterday's appeal.

By our decision dated March 22, 1978, this Board held that the leasing service did indeed have an undisclosed interest in Coyer's offer, and that the company's alleged "waiver" of that interest was ineffective, so that Coyer's offer was violative of 43 CFR 3102.7 and 43 CFR 3112.5-2. The Board remanded the case to the Wyoming State Office for further action consistent with that opinion. Alfred L. Easterday, 34 IBLA 195 (1978).

In an effort to implement the Board's decision in Easterday, *supra*, the Wyoming State Office rejected Coyer's lease offer by its letter decision dated April 10, 1978. However, in so doing, the Wyoming State Office advised Coyer that he had a right to appeal from that decision to this Board, in which event the adverse party to be served would be Easterday. This advice is in error, as will be explained. 1/

1/ BLM Manual sec. 1841.1 (Rel. 1-920, 7/15/74) provides in part:

".15 The Right of Appeal. Parties to BLM decisions either have or do not have the right of appeal by regulation. (See 43 CFR 4.410.) Therefore, a decision may neither grant the right where it does not exist nor withhold it where it does exist." [Emphasis added.]

Coyer then filed this appeal. On June 20, 1978, Coyer and one Fred L. Engle, d/b/a Resource Services Company, filed suit in the United States District Court for the District of Wyoming, seeking judicial review of this Board's decision in Alfred L. Easterday, *supra*. Coyer v. Andrus, Civ. No. C 78-104.

In response to Coyer's appeal to this Board, Easterday moved that it be summarily dismissed, asserting that this Board's decision in Easterday had made the matter res judicata.

[1] Coyer's appeal is, in effect, an appeal of the decision of this Board in Easterday, involving the same parties, the same events, the same lease, and is before the same tribunal. Although it purports to be an appeal from the action of the Wyoming State Office in rejecting Coyer's lease offer, that action was merely the ministerial implementation of the Easterday decision, and carried no right of appeal to the Board. The decision of this Board is final for the Department, and no further appeal will lie in the Department. 43 CFR 4.21(c). Where an appeal has been taken and a final departmental decision has been reached, under the doctrine of administrative finality the principle of res judicata will operate to bar consideration of a new appeal arising from a later proceeding involving the same parties, the same land and the same issues. Dallas C. Qualman, __ IBLA __ (1978); Pekka K. Merkallio, 30 IBLA 157 (1977); United States v. Blythe, 16 IBLA 94 (1974), *aff'd*, Blythe v. Kleppe, Civ. No. 77-1446 (10th Cir., filed Nov. 16, 1977); Elsie Farrington, 9 IBLA 191 (1975), *aff'd*, Farrington v. Morton, Civ. No. S-2768 (D. Calif., filed Dec. 15, 1973); Eldon L. Smith, 6 IBLA 310 (1972); Eldon L. Smith, 5 IBLA 330, 79 I.D. 149 (1972); The Dredge Corporation, 3 IBLA 98 (1971); Gabbs Exploration Co., 67 I.D. 160 (1960), *aff'd*, Gabbs Exploration Co. v. Udall, 315 F.2d 37 (D.C. Cir. 1963), *cert. den.*, 375 U.S. 822 (1963).

This appeal is clearly a manifestation of a case barred by the principle of res judicata, and must be dismissed for that reason.

[2] There is, however, yet another basis for the dismissal of this appeal. Appellant's filing of a suit for judicial review of our previous decision in this matter contemporaneous with his filing of his appeal to this Board has placed the matter before two tribunals, administrative and judicial. In past cases such as this, where matters pending before the Department have been submitted to a court of law, the Department has customarily deferred to the jurisdiction of the court. In such case the administrative appeal may be suspended to await the court's disposition of the case, or the administrative appeal may be dismissed, as indicated by the circumstances. In Carl Alber, A-30369 (May 25, 1967), the Department held:

Where a decision of the Director, Bureau of Land Management, is put into full force and effect pending a decision on any appeal from the decision, the appellant files an appeal to the Secretary and then brings an action in court to review the Director's decision, his appeal will be regarded as withdrawn or abandoned and will be dismissed.

In light of our holding that Coyer's appeal is barred by the doctrine of res judicata, his filing of an action to litigate the same issues in the United States District Court impels the dismissal of this appeal.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the appeal is hereby dismissed. The administrative record will be returned to the Wyoming State Office, so as to be available for use in the litigation.

Edward W. Stuebing
Administrative Judge

We concur:

Frederick Fishman
Administrative Judge

Douglas E. Henriques
Administrative Judge

